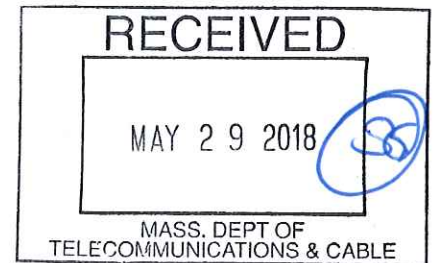


Commonwealth of Massachusetts  
Department of Telecommunications and Cable  
Cable Television Division  
Docket No. DTC 17-5



MOTION OF CHARTER COMMUNICATIONS FOR PROTECTIVE  
TREATMENT OF CONFIDENTIAL INFORMATION

Charter Communications (“Charter”) hereby requests that the Department of Telecommunications and Cable (the “Department”) grant this motion to provide confidential treatment for certain information provided in this proceeding involving the Department’s investigation of Charter’s proposed basic service tier programming, equipment and installation rates (*See* D.T.C. 17-5). Specifically, Charter requests that confidentiality be afforded to its responses to the following Information Requests submitted by the Massachusetts Office of the Attorney General: AG-1-1, 1-2, 1-3, 1-4 and 1-5, which provide detailed information regarding Charter’s BST-only customers and the equipment leased to them. Under this request, the confidential information would be provided only to the Office of the Attorney General and the Department. As grounds for this request, Charter states that the information sought is confidential, competitively sensitive and proprietary information under G.L. c.25C § 5.

**I. Standard of Review**

Confidential information may be protected from public disclosure in accordance with G.L. c. 25C § 5, which provides in part that:

[T]he department may protect from public disclosure trade secrets, confidential, competitively sensitive or other proprietary information provided in the course of proceedings conducted pursuant to this chapter. There shall be a presumption that the information for which such protection is sought is public information and the burden shall be on the proponent of such protection to prove the need for such protection. Where such a need has been found to exist, the department shall protect only so much of the information as is necessary to meet such need.

The Department has previously recognized that competitively sensitive information provided in rate regulation proceedings is entitled to protective status. *See, e.g., Hearing Officer’s Ruling on Motion for Protective Treatment, DTC 16-4 (Oct. 23, 2017); Hearing Officer’s Ruling on Motion for Protective Treatment, DTC 16-3 (Sept. 27, 2017).*

**II. Argument**

The Department sets forth a three-part standard for determining the applicability of G.L. c. 25C § 5. First, the information for which protective treatment is sought must constitute the type of information that can be exempted from public disclosure (*e.g.*, trade secrets, confidential or competitively sensitive or other proprietary information). The detailed information requested by the *Office of the*

*Attorney General* concerning the number of BST-only subscribers, and the number of those customers who are currently being charged for particular types of equipment (*i.e.*, standard converters, HD/DVR converters, and CableCards) is considered by Charter to be proprietary and commercially sensitive information. This information is not otherwise publicly available to Charter's competitors.

Public disclosure of this information could form the basis for marketing programs by competing video providers in relevant geographic areas. A rival could use the number of basic-only subscribers (and compare it to otherwise available information about the number of Charter total cable subscribers) to analyze Charter's marketing strategies and results and to adjust their own marketing efforts against Charter. Similarly, detailed information about the types of equipment these subscribers are currently being charged (or not charged) could be exploited by competitors in their own marketing programs regarding video service and associated equipment. Charter would be particularly vulnerable at the current time as it continues its transition to all-digital service in Massachusetts and addresses the associated impact on the equipment needs of its basic-only customers.

Second, the party seeking protection must overcome the presumption that the material is public in nature and prove the need for non-disclosure of the information. As noted above, the specific information the Attorney General is requesting is not publicly available, which is presumably why the Attorney General is seeking the information in this proceeding.

The Department itself collects a limited amount of community-specific subscriber information, but the required information does *not* identify the particular type of subscriber (*i.e.*, basic-only) or the particular equipment deployed by the subscriber. The Federal Communications Commission (FCC), for its part, collects data from select cable systems, but it does not make information regarding subscribers, equipment, and prices available to the public. To the contrary, it releases only aggregated information that does not identify the particular cable operator or the particular community -- so as not to endanger commercially-sensitive information. *See In the Matter of FCC Form 325 Data Collection, Notice of Proposed Rulemaking, FCC 17-157, MB Docket No. 17-290 (Nov. 16, 2017)* ("Form 325 filings and the information contained therein generally are not made available to the public until three years after filing due to the confidentiality requests that are routinely filed by cable operators....Before the three-year period, the data is used by the Commission on an anonymized basis."). In preparing its annual price report, the FCC surveys a random sample of cable operators in communities nationwide and reports only the average prices of cable programming packages and types of channels *without* identifying the specific operators or communities. *See, e.g., Report and Order on Cable Industry Prices, DA 16-1166, MM Docket No. 92-266 (Oct. 12, 2016)*. Charter's business practices ensure that proprietary, commercially sensitive information of this nature is not disclosed to any third party in the ordinary course of business.

Third, and finally, where a need for protective treatment has been established, the Department may limit the time period the non-disclosure of the information is in effect. Charter requests that, if the Department must limit the period of confidentiality, the Department treat these materials as having

confidential status for at least three (3) years, with an opportunity to renew its request for confidential treatment at the end of that period based upon a showing of need for continuing protection.

### III. Conclusion

For these reasons, Charter requests that the Department grant protection from public disclosure of the confidential information submitted in this proceeding in accordance with G.L. c. 25C §5. Should the Department have any concerns regarding the grant of protection from public disclosure for these materials, or if any request by a third party is made for access to these documents, Charter respectfully requests notification to the undersigned to amend and/or clarify Charter's request for confidential treatment *before* the Department or the Office of the Attorney General releases the information.

Respectfully submitted,

CHARTER COMMUNICATIONS

By: \_\_\_\_\_ / s / \_\_\_\_\_

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May 29, 2018